

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CEDRIC LAMAR TENNESSEE,

Defendant-Appellant.

UNPUBLISHED

July 31, 2008

No. 278483

Wayne Circuit Court

LC No. 06-011779-01

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Defendant was convicted by a jury of carrying a concealed weapon (CCW), MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a second-offense habitual offender, MCL 769.10, to 1½ to 7½ years each for the CCW and felon in possession convictions, and to a two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm defendant's convictions and sentences but remand for the ministerial task of correcting the judgment of sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his dual convictions for felon in possession of a firearm and felony-firearm violate the prohibition against double jeopardy. There is no record of defendant's having raised this issue below and, therefore, it is not preserved. *People v Geno*, 261 Mich App 624, 626; 683 NW2d 687 (2004). Thus, the issue is reviewed for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Felony-firearm can be predicated on felon in possession of a firearm. *People v Dillard*, 246 Mich App 163, 168; 631 NW2d 755 (2001). Both this Court and the Michigan Supreme Court have rejected the argument that dual convictions for both offenses arising out of the possession of a single weapon violate double-jeopardy protections. *Id.* at 168-171; *People v Calloway*, 469 Mich 448, 450-452; 671 NW2d 733 (2003). Therefore, defendant has not shown a plain error.

Defendant's second issue relates to the consecutive nature of his sentence. Defendant is correct that the trial court erred in wording the judgment of sentence. Only the sentence for the felony underlying the felony-firearm conviction, in this case the offense of felon in possession of

a firearm, is to be served consecutively to the underlying offense, and it is also to be served before the underlying offense. *People v Clark*, 463 Mich 459, 463-464; 619 NW2d 538 (2000). The trial court issued an amended judgment of sentence that stated: “Count 1 concurrent to Counts 2 and 3; Count 2 concurrent to Count 1 but consecutive to Count 3.” (Count 1 was CCW, Count 2 was felon in possession, and Count 3 was felony-firearm.) The above statement from the amended judgment of sentence was inadequate to correct defendant’s sentencing scheme because it implies that the felon-in-possession sentence (Count 2) is to be served at the same time as the CCW sentence (Count 1). In actuality, the CCW sentence is to be served at the same time as the *felony-firearm* sentence, with the felon-in-possession sentence to be served at the conclusion of the felony-firearm sentence. The judgment of sentence must be corrected to read: “Count 1 and Count 3 to be served concurrently. Count 2 to be served immediately after and consecutively to Count 3.”

We affirm defendant’s convictions and sentences but remand for the ministerial task of correcting the judgment of sentence. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto